

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PENNSYLVANIA PUBLIC SCHOOL	:
EMPLOYEES' RETIREMENT SYSTEM,	:
individually and on behalf of all others	:
similarly situated,	:
	:
Plaintiff,	:
	:
v.	:
	:
BANK OF AMERICA CORPORATION, et al.,	:
Defendants.	:
	:
	:
	:
	:
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11-CV-00733 (WHP)

JOINT STATUS REPORT  
CONCERNING CLASS  
CERTIFICATION  
AND DOCUMENT DISCOVERY

Lead Plaintiff, Pennsylvania Public School Employees' Retirement System ("Lead Plaintiff" or "PSERS"), and Defendants Bank of America Corporation, Brian T. Moynihan, Charles H. Noski, Kenneth D. Lewis, Neil Cotty and Joe L. Price (collectively "Defendants"), by their counsel, respectfully submit this Joint Status Report Concerning Class Certification and Document Discovery.

1. On June 20, 2011, the Court issued a Memorandum and Order naming PSERS as Lead Plaintiff in this action and appointing its counsel, Barrack, Rodos & Bacine, as Lead Counsel.

2. On July 30, 2013, the Court issued an Order concerning class certification in this action, which established a schedule for filing of materials with respect to the class certification motion, and directed, *inter alia*, that the parties submit a joint report regarding the proposed class certification motion by October 31, 2013.

3. The parties have met and conferred concerning the elimination or narrowing of issues relating to the class certification motion, and as a result have agreed to the following:


- a. PSERS proposes to bring this action on behalf of all persons or entities who purchased or otherwise acquired either Bank of America Corporation's Common Stock ("CS") or Common Equivalent Securities ("CES") during the Class Period of February 27, 2009 through October 19, 2010, and who allegedly suffered damages as a result (the "Class"). Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of each of the Executive Defendants; (iii) any person who was an executive officer and/or director of Bank of America Corporation during the Class Period; (iv) any entity that served as an underwriter for Bank of America Corporation's offering of CES; (v) any person, firm, trust, corporation, officer, director, or any other individual or entity in which any Defendant has a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. PSERS also proposes that the Court appoint Barrack, Rodos & Bacine as Lead Counsel for the Class in this action.
- b. Defendants do not contest the efficiency of the market for Bank of America CS and CES during the Class Period with respect to Lead Plaintiff's motion for class certification. Accordingly, as noted in Lead Plaintiff's letter of October 17, 2013, there was no need for the parties to exchange expert reports pertaining to the class motion.
- c. In the papers to be submitted on November 15, 2013 in support of Lead Plaintiff's motion for class certification, Lead Plaintiff intends to demonstrate that each of the elements necessary for certification of the Class is satisfied, as

follows: (1) the proposed Class satisfies the numerosity requirement of Federal Rule of Civil Procedure 23(a); (2) the proposed Class satisfies the commonality requirement of Rule 23(a); (3) the claims of Lead Plaintiff are typical of the claims of absent class members under Rule 23(a); (4) Lead Plaintiff can adequately represent the Class under Rule 23(a); (5) common issues in this action and the proposed Class predominate over any individual issues pursuant to Rule 23(b)(3); and (6) this action and the proposed Class satisfy the superiority requirement of Rule 23(b)(3).

- d. Defendants do not dispute that this action and the proposed Class satisfy elements 1, 2, 5 and 6. However, Defendants reserve their right to dispute in their opposition papers due December 20, 2013, elements 3 and 4, which relate to typicality and adequacy of the Lead Plaintiff. Defendants will notify the Court and Lead Plaintiff no later than December 13, 2013 if they intend to challenge the adequacy or typicality of Lead Plaintiff.
- e. The parties have exchanged written discovery related to class and merits issues, including the production of documents. The parties are meeting and conferring regarding the scope of document discovery by all parties.
- f. Defendants intend to serve a Rule 30(b)(6) notice on Lead Plaintiff for a deposition of a Lead Plaintiff representative. After receipt of such notice, Lead Plaintiff will meet and confer with Defendants and make its Rule 30(b)(6) designee reasonably available for examination.

- g. The parties reserve their right to alter their position on these issues, including in subsequent dispositive motions, for any reason before final judgment, pursuant to Federal Rule of Civil Procedure 23(c)(1)(C).
- 4. The parties have been engaging in good-faith efforts to produce documents in response to the parties' respective discovery requests. To date, Defendants have produced approximately 4.5 million pages of documents and thousands of native files on the core issues in the litigation. Lead Plaintiff has produced hundreds of pages of documents in response to Defendant Bank of America's requests.
- 5. At the time the Court set the deadline for substantial completion of document discovery on November 29, 2013, Defendants were hopeful that they would be able to leverage significant other document productions to resolve Lead Plaintiff's requests for documents, here. Unfortunately, this has not been the case. Lead Plaintiff's document requests are comprehensive and involve over 60 custodians. The parties have been meeting and conferring in good faith to focus those requests.
- 6. Nonetheless, significant discovery remains to be completed. Specifically, Lead Plaintiff has identified more than 60 custodians whose electronically stored information Lead Plaintiff wants reviewed pursuant to search protocols that contain more than 100 search terms. Various non-custodial documents also remain to be produced.
- 7. The parties agree that, despite best efforts to date, the parties are unlikely to substantially complete document production by November 29, 2013.
- 8. For these reasons, it appears that the orderly production of documents would be facilitated by an extension of the deadline for the substantial completion of document

production to January 31, 2014. Such an extension should not unduly prejudice any party and would not significantly impact the Court's management of its docket or require any change to the current deadline of December 31, 2014, for the completion of fact witness discovery.



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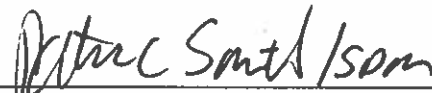
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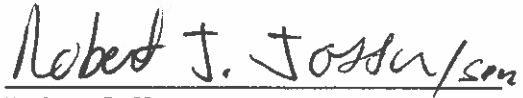
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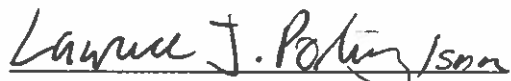
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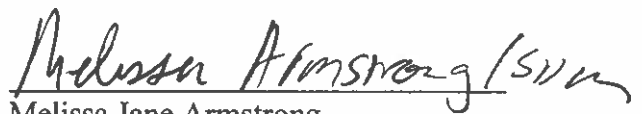
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